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No. 85-1669

In The
Supreme Court Of The United States

OCTOBER TERM, 1985

MARGUERITE FINDLAY,
Petitioner,

v.

STATE OF CONNECTICUT,
Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

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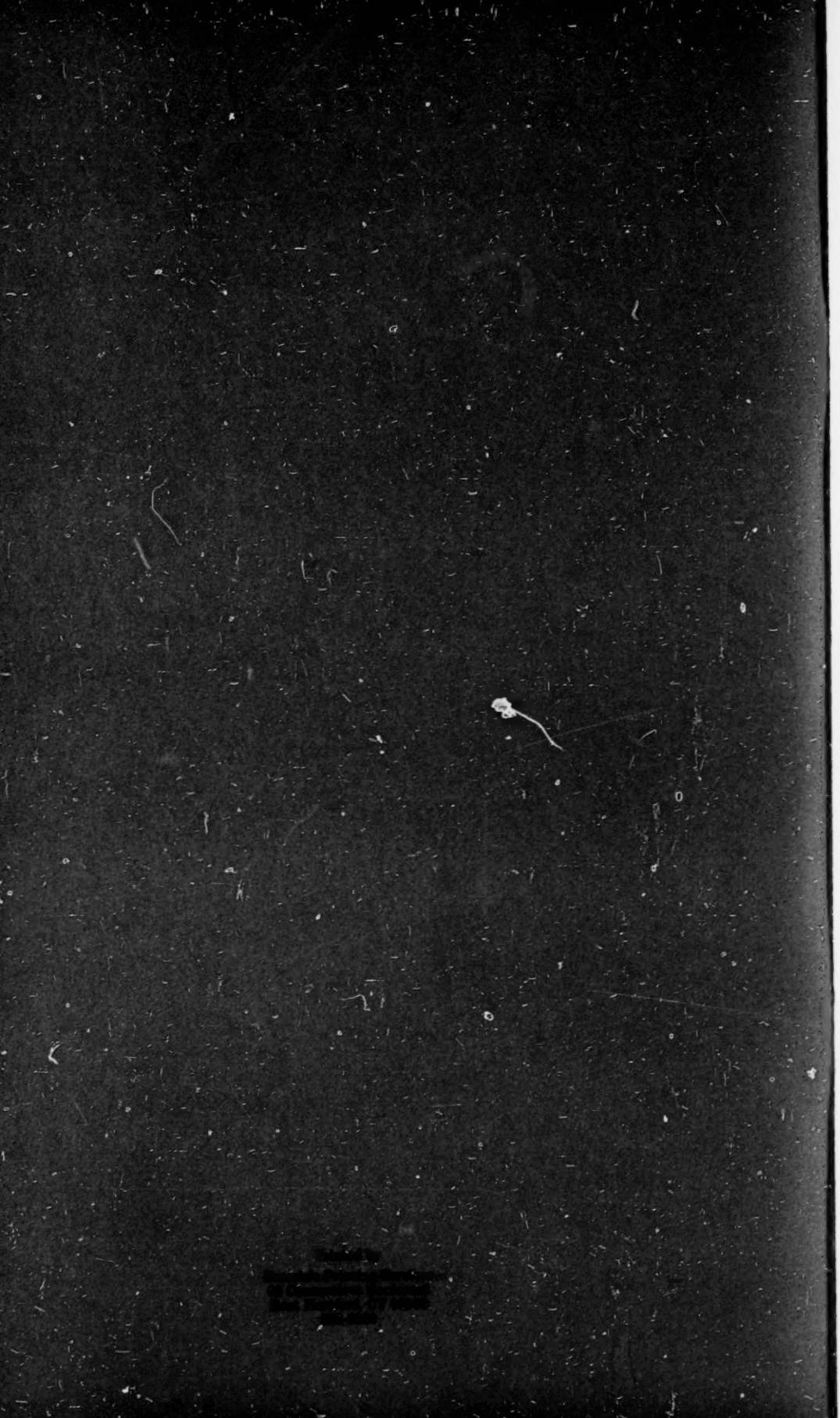

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REASONS FOR DENIAL OF THE PETITION

1. The petitioner relies heavily on the opinions of two Justices of this Court dissenting from the denial of certiorari in Butler v. South Carolina, 459 U.S. 932 (1982), and Adams v. South Carolina, 464 U.S. 1023 (1983), to support his request that this Court grant certiorari to address the validity of a Connecticut jury instruction informing the jury that a reasonable doubt is one "for which a valid reason can be assigned." While it is significant, of course, that the denial of certiorari in Butler and Adams prompted one and, in Adams, two Justices to write a dissenting opinion on the jury instruction issue, it is certainly more significant that seven Justices decided to deny certiorari in the first place,

especially given the conflict in the courts that the petitioner claims to exist. Butler and Adams, moreover, were capital cases and involved jury instructions significantly different from the one under consideration here. In Butler the trial court had defined reasonable doubt as a "substantial doubt for which an honest person seeking the truth can give a real reason" and as "not a weak or slight doubt, but . . . a serious or strong or substantial well-founded doubt as to the truth of the matters asserted by the state." 459 U.S. at 934 (Marshall, J., dissenting from the denial of certiorari). The instruction in Adams similarly described reasonable doubt as "a substantial doubt arising out of the testimony or lack of testimony in the case for which a person honestly seeking to find the truth can

give a reason" and "not a weak or a slight doubt, but a strong and well-founded doubt as to the truth of the charge." 464 U.S. at 1024 (Marshall, Brennan, JJ., dissenting from the denial of certiorari). In contrast, the instruction in the case at bar is free of any language permitting the state to satisfy its burden of proof merely by eliminating any "substantial," "strong" or "well-founded" doubt. Petition at 7-9. And while the instruction used below did state that a reasonable doubt is one for which a valid reason "can be assigned," it did not personalize the assignment process by suggesting, as did the instructions in Butler and Adams, that the assignment must be done by an "honest person seeking the truth."

2. The jury instructions in most of the lower federal court and state appellate court cases relied upon by the petitioner to support his position on the merits resemble those in Butler and Adams more than the instructions in the case at bar. Thus although a conflict among the courts may exist about the validity of the type of instructions used in Butler and Adams, see Adams v. South Carolina, 464 U.S. at 1026 (Marshall, Brennan, JJ., dissenting from the denial of certiorari), that conflict is simply not relevant here. In many of the decisions from which the petitioner seeks to draw support the jury instructions either defined reasonable doubt in unusually demanding terms, thus arguably lessening the prosecution's burden of proof, see Dunn v. Perrin, 570 F.2d 21,

24 (1st Cir. 1978) (a "strong and abiding conviction"); State v. Keffer, 281 S.E.2d 495, 498 (W. Va. 1981) (a doubt that is "actual and substantial"), or suggested that jurors might individually have to specify and defend the precise nature of this doubt. Simmons v. State, 206 Miss. 535, 40 So.2d 289, 290-91 (1949) ("reasonable doubt must be of the type that you can give a good reason for when you get back in the jury room and discuss the matter, and if you have a doubt in your mind and some fellow juror asks you if you have a doubt, you will be able to give your reasons for having entertained such doubt"); People v. LaRosa, 112 A.D.2d 954, 492 N.Y.S.2d 633, 634 (1985) (jury had to come up with"substantial" and "articulable" reason for its doubts);

State v. Boswell, 294 S.E.2d 287, 295-96 (W. Va. 1982) (reasonable doubt was "one for which he who entertains such doubts should be able to give a good and substantial reason" therefor); State v. Keffer, supra (same).

3. The instructions in the case at bar were undoubtedly correct. The petitioner, in fact, did not object to them at trial. Petition at 9. While that failure does not deprive this Court of jurisdiction since the Connecticut Supreme Court reviewed the instructions on the merits under an exception to its contemporaneous objection rule, Harlin v. Missouri, 439 U.S. 459, 459 (1979); App. to Petition at 18A, the absence of an objection does reveal that at trial the petitioner did not find the instruc-

tions sufficiently offensive to ask the trial court for a corrective instruction or a new trial. See State v. Milum, 197 Conn. 602, 500 A.2d 555, 565 (1985). Viewing the instructions as a whole, as this Court must, Cupp v. Naughten, 414 U.S. 141, 146-47 (1973), the State understands why the petitioner found no fault with the challenged language at trial. The language now isolated by the petitioner formed only part of a sentence that the trial court read in its entirety: "A reasonable doubt [sic] for which a valid reason can be assigned; it is a doubt which is something more than a guess or a surmise." Petition at 8. The trial court then provided several additional sentences that expanded on the notion that a reasonable doubt does not merely mean a

conjecture. Id. Examining the challenged language in the context of the charge as a whole, the Connecticut Supreme Court thus accurately described the instruction as one that "'essentially defined a reasonable doubt as a doubt founded on reason as contrasted with a purely speculative doubt.'" App. to Petition at 19A (quoting State v. Derrico, 181 Conn. 151, 170-71, 434 A.2d 356, cert. denied, 449 U.S. 1064 (1980)). Surely no constitutional error arises from an instruction that defines reasonable doubt by means of this sort of comparison.

4. The petitioner's second claim that the trial court unconstitutionally instructed the jurors that in order to acquit they would have to reconcile the

facts with innocence provides no additional basis for a grant of certiorari. Here again the petitioner did not object at trial, thus again revealing that he did not find the challenged language prejudicial until the jury found him guilty. The petitioner cites no conflict of authority or indeed any authority on the precise issue he frames. Instead the petitioner merely asks this Court to delve into the idiosyncracies of a state trial court's charge to the jury. The petitioner misconceives the nature of the writ of certiorari. This Court does "not grant a certiorari to review evidence and discuss specific facts." United States v. Johnston, 268 U.S. 220, 227 (1925) (Holmes, J.).

CONCLUSION

For the foregoing reasons, this Court should deny the petition for a writ of certiorari to the Connecticut Supreme Court.

Respectfully submitted.

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